

State of Michigan

PROBATE JUDGES

LINDA S. HALLMARK
DANIEL A. O'BRIEN
ELIZABETH PEZZETTI
KATHLEEN A. RYAN



PROBATE ADMINISTRATOR
REBECCA A. SCHNELZ

PROBATE REGISTER
JILL KONEY DALY

Probate Court County of Oakland

March 30, 2012

Mr. Corbin R. Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing MI 48909

RE: ADM File No. 2006-47

Dear Mr. Davis:

We have reviewed the proposed court rule changes included in ADM File No. 2006-47. We urge the Court to consider the following points regarding the proposed changes.

1. A difficult issue facing court users today is uniformity of practice from county to county. This applies to both attorneys and self-represented parties. While each court follows the court rules, there are gray areas where the rules do not clearly instruct, and simple differences in interpretation of how to apply the rules. The court rule revisions, as proposed, increase the likelihood of court users receiving different results at different courts when trying to file documents.

MCR 5.113(A)(2) currently provides that "[a] judge or register shall not receive and file a nonconforming paper." This gives a clear direction for the judge and register, and a clear expectation for the court user. As proposed, the court rule would read that [a] judge or register may reject nonconforming documents in accordance with MCR. 8.119." [emphasis added] The proposed revisions to MCR 8.119(C) then state that "the clerk of the court may only reject documents that do not meet the following minimum filing requirements..." The rule then goes on to reference all the various requirements listed throughout the court rules.

As currently written, MCR 8.119 is permissive, but when read with current MCR 5.113, the direction is clear for probate judges and registers. The proposed changes would take away the clear direction and authority to reject non-conforming documents. [Please note that the proposed changes would also make MCR 1.109(C)(4) permissive in the same manner.]

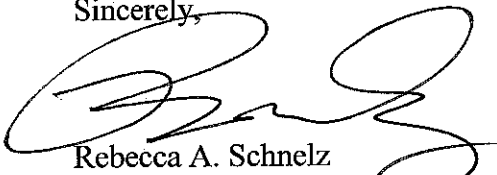
Mr. Corbin Davis
March 30, 2012
Page 2

2. The proposed revision of MCR 8.119(C) refers back to MCR 5.113(A) and 5.114(A) for purposes of describing the only reasons documents may be rejected for not meeting filing requirements. However, limiting the reasons for rejection to these two subsections leaves out a number of court rule requirements for documents. For some, this will cause uncertainty as to whether documents may be rejected under MCR 5.113 and 5.114 because those rules are not referenced as a whole in MCR 8.119(C). For purposes of clarity, it is suggested that the references to MCR 5.113 and 5.114 that are found in MCR 8.119 be modified to refer to the rules as a whole, not just particular subsections.


3. MCR 5.113 refers to "papers." Throughout the proposed revisions, it appears that the word "documents" has been substituted for "papers." A similar change should be considered for MCR 5.113.

We thank you for the opportunity to comment on the proposed changes. Please do not hesitate to contact us if you should have any questions or need clarification of our concerns.

Sincerely,



Rebecca A. Schnelz
Probate Court Administrator



Jill Koney Daly
Probate Register

By email to: MSC_clerk@courts.mi.gov